

**VOLUNTARY CLEANUP CONTRACT
13-6194-NRP**

**IN THE MATTER OF
TOLEMAC PROPERTY-CAROLINA BOAT AND CARS SITE, YORK COUNTY
and
3310 HWY 51 REDEVELOPMENT, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and 3310 Hwy 51 Redevelopment, LLC, with respect to the Property located at 3310 Highway 51 N., Fort Mill in York County, South Carolina. The Property includes approximately 0.2 acres generally identified as the northern portion of Tax Map Serial Number 7210000051, and more specifically identified in Appendix A. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of February 4, 2013, and any amendments thereto, by 3310 Hwy 51 Redevelopment, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 et. seq. (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq. (as amended), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §44-56-710 et. seq. (as amended), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina

Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq. (as amended), the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq. (as amended), the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq. (as amended) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et. seq.

- A. "3310" means 3310 Hwy 51 Redevelopment, LLC.
- B. "Beneficiaries" means 3310's Non-Responsible Party lenders, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Property as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual

interest of 3310 or its Beneficiaries.

- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the environment.
- I. "Site" means all areas where a contaminant has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA section 101 (28).
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and Operators: The owners and operators of the Property include the following:

Cleveland Beacon Products Company	To 1981
Joseph W. Molner and Phillip C. Molner	1981 to 1983
C.J.M. Corporation	1983 to 1994
Tolemac	1994 to present

B. Property and Surrounding Areas: The Property is a 0.2 acre property adjacent to the Carolina Boat and Cars Site, a property that is the subject of VCC 11-6046-NRP. The Property is generally surrounded by light industrial and commercial properties interspersed with undeveloped tracts. Specific features that bound the Property include industrial/commercial/retail properties to the north and south, wooded property to the east, and State Highway 51 and US Highway 21 to the west. The subject Property is undeveloped and was wooded until the early 2000's when land to the north was developed. The property to the south was an automobile dealership and service center in the 1990's, and a sales and service center for recreational vehicles and boats in the 2000's which ceased operation in 2009. It appears that historical operations and storage of boats and other materials associated with the boat service center extended onto the subject Property. No development has occurred on the subject Property which has been retained by the current owner as a potential driveway access between Highway 51 and a property east of the subject Property.

A. Investigations / Reports: Several rounds of environmental assessment activities have been conducted on the Carolina Boat and Cars Site, located just south of the subject Property. The most recent assessment activities were conducted through VCC 11-6046-NRP. That investigation confirmed the presence of chlorinated solvents and petroleum constituents in groundwater on the Carolina Boat and Cars Site. Chlorinated solvents and petroleum constituents were detected in groundwater from monitoring wells installed just south of the subject Property. Chlorinated solvents were detected above MCLs in monitoring wells MW-1, MW-1D, and MW-4. Methyl-tert-butyl ether was detected above the EPA Regional Screening Level for Tapwater in MW-1 and MW-3. The groundwater flow direction is to the northwest toward the subject Property.

B. The January 16, 2013 Phase I ESA report (Terracon) identifies that the subject

Property is grass covered with minor amounts of scattered debris. A soil and concrete rubble pile overgrown with weeds is present on the eastern portion of the Property. The Phase I identifies documented groundwater contamination on the Carolina Boat and Cars Site immediately south of the subject Property as a Recognized Environmental Condition.

C. Applicant Identification: 3310 is a state of North Carolina limited liability company with its principal place of business located at 1341 E. Morehead Street, Suite 201, Charlotte, NC 28204. 3310 affirms that it has the financial resources to conduct the response action pursuant to this Contract.

D. Proposed Redevelopment: 3310 will acquire the Property and plans to develop it in conjunction with development of the southern portion of Parcel 7210000051 (Carolina Boat and Cars Site) for retail, commercial, or industrial use.

BONA FIDE PROSPECTIVE PURCHASER STATUS

2. 3310 certifies that it is not a current owner of the Property, or parent, corporate successor or subsidiary of a current or past owner of the Property; is not a Responsible Party for the Site, or a parent, successor or subsidiary of a Responsible Party for the Site; and has not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program. 3310 also certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

3. 3310 agrees to conduct the response actions specified in the sub-paragraphs below. This Work Plan shall be submitted by 3310, or its designee in accordance with the schedule provided in the initial Work Plan. 3310 acknowledges that the assessment may find distributions of Existing Contamination requiring additional

assessment and/or corrective action on the Property that cannot be anticipated with this Contract. 3310 agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, 3310 may seek an amendment of this Contract to clarify its further responsibilities. 3310 shall perform all actions required by this Contract, and any related actions of 3310's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). 3310 shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. Code Ann. Regs. R.61-71, the South Carolina

Well Standards. The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.

c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:

- i. the full EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
- ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
 - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
 - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).

d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detections levels, the analytical method shall use the lowest achievable detection levels.

6). The Work Plan shall include the names, addresses, and telephone numbers of 3310's consulting firm(s), analytical laboratories, and 3310's contact person for matters relating to this Contract and the Work Plan.

a). The analytical laboratory shall possess applicable Certification defined in

25A S.C. Code Regs. R.61-81, for the test methods specified in the Work Plan.

- b). 3310 shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify 3310 in writing of approvals or deficiencies in the Work Plan.
- 8). 3310, or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). 3310 shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 10). 3310 shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 11). Except as otherwise provided in this Contract, 3310 shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. 3310 shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or

Professional Geologist duly-licensed in South Carolina.

- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). 3310 shall also characterize any Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with a Department approved plan.
- 2). Upon discovery of any Segregated Source that has not yet released all contents to the environment, 3310 shall expeditiously stabilize or remove the contents of the Segregated Source from the Property
- 3). 3310 shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. 3310 shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Assess soil quality across the Property:

- 1). 3310 shall collect and analyze a minimum of six (6) soil samples from three (3) locations on the Property. 3310 shall collect one surface soil sample (0-1 foot below land surface {bls}) and one subsurface soil sample (>2 feet bls)

from three locations spaced evenly across the Property.

- 2). Each surface soil sample shall be analyzed for TAL-Metals and TCL-SVOCs, and for TCL-VOCs if field screening indicates the presence of VOCs. Each subsurface sample shall be analyzed for TAL-Metals, TCL-VOCs and SVOCs.
- 3). Soil quality results shall be compared to the Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

E. Assess groundwater quality:

- 1). 3310 shall assess groundwater quality and flow direction from the five existing groundwater monitoring wells located on the Carolina Boat and Cars Site just south of the Property. Monitoring well locations MW-1, MW-1D, MW-2, MW-3 and MW-4 shall be analyzed for TCL VOCs.
- 2). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

F. Evaluate and control potential impacts to indoor air:

- 1). 3310 shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting retail, commercial, or industrial exposures consistent with the building construction existing or proposed to be used on the Property.
- 2). If the Department determines that an evaluation of potential impacts to indoor air is necessary (based on the modified Johnson and Ettinger Model noted

above), 3310's evaluation shall, unless otherwise agreed to by the Department, consist of one or both of the following evaluations dependent upon whether existing buildings will be reused, or replaced with new construction.

- a). For areas where existing structures shall be reused, evaluation shall consist of collection and analysis of indoor air samples from within the building during two separate sampling events approximately six months apart. One sample shall be collected per every 1000 square feet of building footprint potentially subject to Vapor Intrusion. One sampling event shall be in the winter. Each sampling event shall include collection of a representative number of indoor air samples for laboratory analysis of all site-related volatile organic constituents. The samples collected for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events. The method shall be capable of detecting gas concentrations at screening levels indicative of a 10^{-6} risk. The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance
- b). For areas where new construction is planned, evaluation shall consist of collection and analysis of a representative number of soil gas samples from the proposed footprint of buildings to be constructed on the Property over areas potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using a depth-appropriate attenuation factor). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or

supplemental EPA guidance.

- 3). The Department may allow 3310 to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). 3310 shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

G. Institute reasonable Contamination control measures:

- 1). Prior to the commencement of or during redevelopment activities, 3310 shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
 - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - b). 3310 shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.
 - c). 3310 shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property:
 - d). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health risk-based exposure standards with plausibly complete routes of exposure.
 - i. 3310 may, but is not required to, request Department approval to

conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. If 3310 elects to conduct a risk assessment, it shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, 3310 shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed to complete the risk assessment.

- ii. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. If required by the Department, the corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
- iii. Upon completion of any corrective measures, 3310 shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.

H. Monitor and/or abandon the monitoring wells:

- 1). 3310 shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
- 2). The Department will determine the frequency and duration of the monitoring

program on a case-specific basis.

- 3). 3310 shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

4. 3310 has prepared and submitted under separate cover from the Work Plan, a Health and Safety Plan that 3310 certifies is consistent with Occupational Safety and Health Administration regulations. 3310 agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by 3310.

PUBLIC PARTICIPATION

5. 3310 and the Department will encourage public participation to implement this Contract as follows:
 - A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by 3310.
 - B. 3310 shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by [Company Name] under Voluntary Cleanup Contract 1-6149-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a

brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of 3310. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".

- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
- 3). 3310 shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). 3310 agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). 3310 shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, 3310 shall restore the sign within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

6. 3310 shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within 90 days of the execution date of this Contract and semi-annually thereafter.

A. The updates may be in summary letter format, but should include information about:

- 1). The actions taken under this Contract during the previous reporting period;
- 2). Actions scheduled to be taken in the next reporting period;

- 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

7. 3310 shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. 3310 shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

8. 3310 or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property to prohibit residential and recreational (such as sports fields and playgrounds) use on the Property and to prohibit groundwater use on the Property. Additional restrictions may be required based on the response actions implemented under this Contract. Generally acceptable levels for unrestricted use include screening levels for residential use as specified in the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites and drinking water standards as specified in the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites. The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:

- A. The Department shall prepare and sign the Declaration prior to providing it to 3310. An authorized representative of 3310 or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
- B. 3310 or its Beneficiaries shall file the executed Declaration with the Registrar of Deeds or Mesne Conveyance for the county where the Property is located.
- C. 3310 or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
- D. In the event that Contamination exceeds levels acceptable for unrestricted use (Regional Screening Levels for residential use) on a portion of the Property, 3310 or its Beneficiaries may create a new parcel that will be subject to the Declaration.
- E. The Declaration shall be recorded on the master deed of any planned development for the Property and noted, or referenced hereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for 3310 or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). 3310 or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.

2). 3310 or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.

G. The Declaration shall provide that the Department has an irrevocable right of access to the Property after 3310 acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.

H. 3310 or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.

I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

9. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

A. All correspondence, notices, work plans, and reports shall be submitted to:

Angela Gorman
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to 3310 shall be submitted to 3310's designated contact person who as of the effective date of this Contract shall be:

Jane Adkins-Teague
3310 Hwy 51 Redevelopment, LLC
1341 E. Moorehead St., Suite 201
Charlotte, NC 28204

FINANCIAL REIMBURSEMENT

10. 3310 or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C.Code Ann. §44-56-750 (D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to 3310 on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

Jane Adkins-Teague
3310 Hwy 51 Redevelopment, LLC
1341 E. Moorehead St., Suite 201
Charlotte, NC 28204

- A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 herein.
- B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph 16 herein.

ACCESS TO THE PROPERTY

11. 3310 agrees that the Department has an irrevocable right of access to the Property for environmental response matters after 3310 acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's

authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

12. A Certificate of Completion shall be issued to 3310 or its Beneficiaries for the Property under this Contract as follows:

- A. 3310 or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that 3310 or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. § 44-56-710 through 760 (as amended).
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been filed, but all actions under this Contract have not been completed due to Property-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that 3310 or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if 3310 or its Beneficiaries do not satisfactorily

complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. 3310 or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. 3310 shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The obligations and protections of this Contract apply to and inure to the benefit of the Department, 3310, and its Beneficiaries. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:
 - A. 3310 or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
 - B. If the Certificate of Completion has not been issued, 3310 or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract or other format approved in writing by the Department documenting that the new person or entity:

- 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
- 2). Has sufficient resources to complete the activities of this Contract;
- 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract,
- 4). Will assume the protections and all obligations of this Contract and,
- 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, 3310 or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential or commercial use provided the Declaration is recorded on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

CONTRACT TERMINATION

16. 3310, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may not terminate this Contract without cause and before termination, shall provide 3310 or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:
- 1). Failure to complete the terms and conditions of this Contract;
 - 2). Change in 3310's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
 - 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
 - 4). Failure of 3310 or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by 3310 or its Beneficiaries;
 - 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
 - 6). Failure by 3310 or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
 - 7). Failure by 3310 or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of 3310's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should 3310 or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed to by the actions of 3310 or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.

- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of 3310 or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, members, managers, employees, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any other covered party who did not participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. 3310 and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
 - 1). Protection from CERCLA contribution claims.
 - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
 - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department.
 - 1). The Department's covenant not to sue 3310 and its Beneficiaries for Existing

Contamination but not for any Contamination, releases and consequences caused or contributed by 3310 or its Beneficiaries.

- 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by 3310 or its Beneficiaries. The Department retains all rights under State and Federal laws to compel 3310 and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by 3310 or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than 3310 and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than 3310 and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY 3310

19. 3310 retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. 3310 and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute to the Property. However, 3310 and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. 3310 and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by 3310 or its Beneficiaries. 3310 and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY 3310 AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, 3310 and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

[Remainder of page left blank]

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste
Management

DATE:

Reviewed by Office of General Counsel

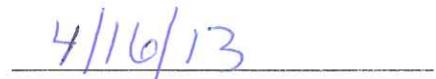
3310 HWY 51 REDEVELOPMENT, LLC

BY: 21/51 LLC, Its Manager

DATE:



By: Jane Adkins-Teague



APPENDIX A

3310 Hwy 51 Redevelopment, LLC

Application for Non-Responsible Party Voluntary Cleanup Contract

February 4, 2013

FEB 04 2013



Non Responsible Party Application for Voluntary Cleanup Contract

SITE ASSESSMENT,
REMEDICATION &
REVITALIZATION

I. Applicant Information

1. Applicant is a: ☒ Single Entity ☐ Co-Entity (Each Co-Entity must complete items 1-8)
2. Applicant Type: ☐ Private Individual /Sole Proprietorship ☒ For-profit Business (Corp., Partnership, etc.) ☐ Tax-Exempt Trust/ Corporation/ Organization ☐ Government / Other Public Funded Entity

3. Applicant's Legal Name 3310 Hwy 51 Redevelopment, LLC

4. Contract Signatures for this Applicant

a. Authorized Signatory

By: 21/51, LLC, Its Manger, By: Jane Adkins-Teague Manager jadkins@withrowcapital.com

Name Title Email
1341 E. Morehead St., Ste. 201 704-344-1868 803-431-9912

Address Phone1 Phone2
Charlotte NC 28204

City State Zip

b. Other Signatories ☒ None

Name	Title	Phone	Email	Signature Required On Contract?
		() -		<input type="checkbox"/>
		() -		<input type="checkbox"/>
		() -		<input type="checkbox"/>

5. Physical Location of Applicant's Headquarters

1341 E. Morehead St. 201
Street address Suite Number
Charlotte NC 28204
City State Zip

6. Mailing address: ☒ Same as Authorized Signatory Go to question 7

Contact person (if different from Authorized Signatory) Title
Street Number or PO Box Phone1 Phone 2
City State Zip Email

7. Company Structure Information ☐ Not-applicable (Local Government, Sole Proprietorship, Private Individual) - Go to Question #8

- a. Company is Incorporated/ Organized/ Registered in North Carolina (state)
- b. List all principals, officers, directors, controlling shareholders, or other owners with >5% ownership interest.

Attach additional pages if needed.

Name	Name
21/51, LLC is the Sole Member of 3310 Hwy 51 Redevelopment, LLC	
Jane Adkins-Teague is the Manager of 21/51, LLC	
Ronald J. Withrow is the Sole Member of 21/51, LLC	

c. Is the applicant a subsidiary, parent or affiliate of any other business organization not otherwise identified on this form?

☐ Yes ☒ No

d. If yes, identify all affiliations:

8. Non-Responsible Party Certification

By signature below, it is affirmed that no person or entity identified anywhere above:

- Is a current owner of the property
- Is a Responsible Party for the site
- Is a parent, successor, or subsidiary of any Responsible Party or owner of the property
- Has had any involvement with the property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program

Jane Adkins-Teague, Manager
Authorized Signatory

Co Signatories

II. Property Information

9. Location

a. Physical Address Adjacent to 3310 Hwy. 51, Fort Mill, SC 29715

b. County York

c. ☒ Property is outside any municipal boundaries ☐ Property is inside the municipal limits of _____
(town/city)

10. List any Companies or Site names by which the Property is known

11. Total Size of Property Covered by this Contract 0.2 Acres

12. How many parcels comprise the Property? 1

13. Current Zoning (general description)

UD - The Urban Development District is designed to permit in certain areas of the county maximum use flexibility. These uses include both retail and commercial.

14. a. Does the property have any above- or below-ground storage tanks? ☐ Yes ☒ No

b. If Yes, provide information on the number and capacity of the tanks, their contents, and whether they will be retained, or closed and/or removed.

15. Parcel Information Complete the information below for each Parcel (attach additional sheets if needed)

a. Tax Map Parcel# 7210000051 (portion of)
b. Acreage 0.20
c. Current Owner Tolmac, Inc.
d. Owner Mailing Address 11655 Central Parkway
Suite 302
Jacksonville, FL 32224
e. Contact Person for Access Terry Williams
f. Access Person's Phone # 704-344-1868
g. Is Parcel Currently Vacant? ☒ Yes ☐ No
h. Buildings on the parcel? ☒ None
(check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
☐ Intact, To be re-used
i. Business/facility operations ☒ Never Operated on the parcel
☐ Not operating since _____
(approx date)
☐ In operation: nature of the
business _____

a. Tax Map Parcel# _____
b. Acreage _____
c. Current Owner _____
d. Owner Mailing Address _____
e. Contact Person for Access _____
f. Access Person's Phone # _____
g. Is Parcel Currently Vacant? ☐ Yes ☐ No
h. Buildings on the parcel? ☐ None
(check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
☐ Intact, To be re-used
i. Business/facility operations ☐ Never Operated on the parcel
☐ Not operating since _____
(approx date)
☐ In operation: nature of the
business _____

a. Tax Map Parcel# _____
b. Acreage _____
c. Current Owner _____
d. Owner Mailing Address _____
e. Contact Person for Access _____
f. Access Person's Phone # _____
g. Is Parcel Currently Vacant? ☐ Yes ☐ No
h. Buildings on the parcel? ☐ None
(check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
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d. Owner Mailing Address _____
e. Contact Person for Access _____
f. Access Person's Phone # _____
g. Is Parcel Currently Vacant? ☐ Yes ☐ No
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(check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
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(approx date)
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b. Acreage _____
c. Current Owner _____
d. Owner Mailing Address _____
e. Contact Person for Access _____
f. Access Person's Phone # _____
g. Is Parcel Currently Vacant? ☐ Yes ☐ No
h. Buildings on the parcel? ☐ None
(check all that apply) ☐ Demolished/Ruins
☐ Intact, To be demolished
☐ Intact, To be re-used
i. Business/facility operations ☐ Never Operated on the parcel
☐ Not operating since _____
(approx date)
☐ In operation: nature of the
business _____

III. Property Redevelopment

16. Describe the intended re-use of the property:

(attach additional sheets if necessary)

Development for retail, commercial or industrial use. The subject property is a small tract less than 30 feet wide that is adjacent to a parcel that has already been entered into the Voluntary Cleanup Program through VCP 11-6046-NRP.

17. a. Will the future use include any chemical processes, petroleum or chemical storage and handling, on-site waste disposal, or generate any hazardous substances? ☐ Yes ☒ No
b. If Yes, identify the substances and discuss steps that will be taken to prevent their release to the environment.

18. Will redevelopment lead to the creation of permanent jobs on the property? ☒ Yes Anticipated Number TBD
☐ No

19. Projected Increase to the Tax Base as a result of this redevelopment: \$ TBD

20. a. Will there be Intangible benefits from this redevelopment such as:

- ☐ LEED, Earth Craft, EnergyStar, or similar certification of Sustainable Development
☐ Creation / Preservation of Green Space on the Property
☐ Deconstruction/ Recycling of demolition or building debris
☒ Other _____

b. Please Describe:

This vacant piece of land generating no tax base for the County will become part of the adjacent redevelopment project.

21. Anticipated date of closing or acquiring title to the property 06 / 01 / 2013

22. Redevelopment Certification

By signature below, the applicant(s) affirm that their proposed use and activities will not knowingly aggravate or contribute to existing contamination or pose significant human health or environmental risks on the property.

Jane Adkins-Teague, Manager
Signature(s)

IV. Project Management And Financial Viability (Co-Entities, refer to instruction sheet)

23. Environmental Consulting Firm

☒ None as of this application date

Terracon Consultants, Inc

Company

2020-E Starita Road

Charlotte

NC

28206

Address

City

State

Zip

Christopher L. Corbitt (Chris)

SC PG #1110

704-509-1777

704-301-3089

clcorbitt@terracon.com

Project Contact1

S.C PE/PG Reg. #

Phone1

Phone 2

email

Project Contact 2

S.C PE/PG Reg. #

Phone1

Phone 2

email

24. Legal Counsel (Optional)
Robinson Bradshaw & Hinson
Firm
William W. Toole 704.377.8373
Attorney Phone1 Phone 2
101 North Tryon Street, Suite 1900 Charlotte NC 28246 wtoole@rbh.com
Street Number or PO Box City State Zip email

25. Applicant's Billing Address ☒ Same as Contact person in #6 above Go to question #26

Financial Contact Title
Company Phone
Address
City State Zip

26. Financial Viability

By signature(s) below, the applicant agrees to:

1. Pay the Department's costs upon receipt of invoices for implementing the Voluntary Cleanup Program for this Property, and
2. Provide financial statements, if requested, to document financial viability to conduct the response actions on the Property.

☐ Waiver Requested (Check Box If applicable)

The applicant is a Local Government or qualifies as a 501(c) Non-Profit Organization, and requests waiver of some Departmental costs of implementing this contract.

Jane Adkins-Teague
Signatures

V. Application Completion (The following are required along with this form. Check applicable boxes)

27. The Legal Description of the Property is attached as a: ☐ Plat Map ☒ Metes and Bounds Text ☐ Both

28. The Phase I Environmental Site Assessment Report is attached as a:

☒ New report completed in the past six months by Terracon Consultants, Inc.

(Name of Environmental Firm)

☐ Older report updated in the past six months by

(Name of Environmental Firm)

29. Environmental sampling data and other reports: (check one)

☐ The Applicant is not aware of any environmental testing on the property

☒ The Applicant believes the Department already has all environmental data in its files on: 11-6046-NRP (Adjacent)

☒ The Following reports are attached:

(Site Name)

Report Date
January 16, 2013

Report Name
Phase I Environmental Site Assessment

Environmental Firm
Terracon Consultants, Inc.

30. Mailing addresses of Former Owners, Operators and other Potentially Responsible Parties:(check one)

☐ Enclosed with this Application as an Attachment

☒ Will be submitted along with (or before) the signed contract

31. The applicants attest by signature below that this application is accurate to their best knowledge. Furthermore, the applicants request DHEC evaluate the Property for inclusion in the Brownfields Voluntary Cleanup Program and draft a Non-Responsible Party Contract for the Property.

Jane Adkins-Teague
Signature(s)

This Section for Department Use Only

Assigned File Name	Tolomac Property Carolina Boat and Cars Site	
Eligible for NRP Contract	Y	N
Assigned File Number	57936	
Assigned Contract Number		

DESCRIPTION OF SURVEY

That certain tract of land situated in the Township of Fort Mill, York County,
South Carolina and being more particularly described as follows:

Beginning at a railroad spike in the old road bed at the northwestern corner of 3310 HWY 51 Redevelopment, LLC , Deed Book 12353 Page 113 (Tax Parcel Number 7210000051) said spike being the southwestern corner of that land that remained when the 5.500 acres shown in Map Book 78 Page 75 was cut out from that 5.697 acres shown in Map Book 72 Page 411; thence, with the line of Tolemac, Inc., successor to C.J.M. Corporation, N30°42'30"E 39.94 feet to point , the southwestern corner of Compact Power, Inc. (Deed Book 11603 Page 169); thence, with Compact Power, Inc., the following two (2) courses; 1) S86°40'11"E 20.74 feet to a point; 2) S85°14'54"E 212.30 feet to a #6 rebar in the line of Chambers Warehouse (Deed Book 6675 Page 10); thence, with Chambers Warehouse, S21°17'37"W 37.88 feet to a #4 rebar, the 3310 HWY 51 Redevelopment, LLC northeastern corner of 3310 HWY 51 Redevelopment, LLC; thence, with 3310 HWY 51 Redevelopment, LLC N85°15'30"W 239.50 feet to a railroad spike, the Point Of Beginning, containing 0.197 acres.

